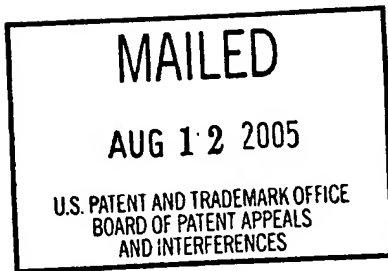


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GURUDUTH SOMASEKHAKA BANAVAR,
TUSHAR DEEPAK CHANDRA, KEVAN LEE MILLER,
ROBERT EVAN STROM, DANIEL CHARLES STURMAN and
MICHAEL JAMES WARD



Appeal No. 2005-1752
Application No. 09/281,421

ON BRIEF

Before THOMAS, DIXON, and BARRY, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1-15, 24-38 and 47-54. It is noted that appellants have canceled claims 16-23 and 39-46. It is further noted in the answer that the examiner has determined to

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merely object to claims 2-9, 4-13, 15, 26-33 and 35-37 as set forth in various locations in the answer. Therefore, claims 1, 10, 14, 24, 25, 34, 38 and 47-54 remain for our consideration on appeal.

Representative independent claim 1 is reproduced below:

1. A method for routing messages within a network,
said method comprising:

receiving a message; and

routing said message to multiple clients of said network, said routing being based on data content of said message irrespective of any destination information within said message, and being resilient to router or link failure within said network without loss of said message.

The following references are relied on by the examiner:

Chandra et al. (Chandra)	6,091,724	Jul. 18, 2000 (filed Nov. 20, 1997)
Marco	6,266,337	Jul. 24, 2001 (filed Jun. 23, 1998)

Claims 1, 10, 14, 24, 25, 34, 38 and 47-54 stand rejected under 35 U.S.C. § 103.

As evidence of obviousness, the examiner relies upon Chandra in view of Marco.

The examiner has not maintained the rejection of claims 1-15, 24-38 and 47-54 under 35 U.S.C. § 103 from the final rejection based upon Bracho in view of Marco. Since it has not

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been maintained in the answer, we consider it to be withdrawn by the examiner.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions and to the answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the answer as expanded upon here, we sustain the rejection of the noted claims under 35 U.S.C. § 103. As it pertains to the currently pending claims on appeal, appellants present arguments to independent claims 1, 24, 47, 48, 49 and 50 collectively where we consider independent claim 1 as representative of these claims. Separate arguments are also presented briefly as to dependent claims 51-54. No arguments have been presented to us as to claims 10, 14, 25, 34 and 38 that also remain on appeal; therefore they fall within our consideration of their respective parent claims.

At the outset, appellants incorporate by reference the examiner relied upon Chandra patent by filing date and serial number at specification pages 1, lines 7-11; in the paragraph

bridging specification pages 3 and 4 and at page 12, lines 7-21. It is further noted that apparently because of this, appellants have not challenged the examiner's views expressed as to this reference at page 4 of the answer regarding the statement of rejection. Therefore, appellants cannot contest that this reference teaches the features of representative independent claim 1 on appeal of receiving a message and reading a message to multiple clients of a network, where the reading is being based upon data content of the messages irrespective of any destination information within the message.

On the other hand, according to the examiner's views expressed at the top of page 5 of the statement of rejection in the answer, the examiner takes the view that Chandra does not disclose the remaining parts of representative independent claim 1 on appeal, that feature of "being resilient to router or link failure within said network without loss of said message." The examiner regards Marco as teachings this capability allegedly not found in Chandra. With this basic premise, we agree.

Marco's basic teachings of his contribution in the art focus around a packet retransmission eliminator as generally discussed

in the abstract and summary and shown in various Figures. The teaching value of this reference to the claims on appeal in our view is essentially at two levels. The first level being the actual showing of the contribution in the art of the packet caches 38/40 in representative Figure 1 on appeal of this reference as well as the data memory 56 and the packets stored within the data memory within the packet storage area 60 such as in Figure 2 with corresponding teachings in element 60/158 in Figure 3. In a more generalized network environment the showing in Figure 6 shows that data memory 256 which is utilized to store packet data as discussed in association with the column 6 discussion of this Figure.

On the other hand, at the second level of understanding of the teaching value of this reference, it is noted that the teaching at column 1, lines 30-44 of Marco indicates that it was well known in the art in traditional TCP protocols that if a source does not receive an acknowledgment signal within a predefined period of time from a receiving destination node, the source retransmits the segment. This implicitly requires the ability to store the message for it to be able to retransmit it

according to this teaching. The storage therefore is comparable to the logging feature to the extent recited in some of the independent claims on appeal even though the arguments are not presented before us as to the specific requirements of those claims. Additionally, the examiner's newly relied upon discussion at the bottom of column 6 of Marco also teaches a little more specifically the same feature of the reliability of traditional TCP protocols where it significantly states beginning at line 57 that different procedures may be implemented to account for possible failures on the hop or link between nodes and on the internet communications taught in this reference. This clearly suggests the link and/or route failure to the extent recited in any claim on appeal. It is also further noted that the discussion at column 1, lines 42-44 that there are other additional situations known in the art where the source node would retransmit a portion or all the message that had not been accurately acknowledged by a receiving node. It appears to us that these situations would have been suggestive to the artisan of known methods to make routing resilient to actual router/node and/or link failures to the extent set forth in the claims on appeal.

It thus becomes more apparent to the reader that the examiner's reason of combinability of Marco and Chandra, to the extent briefly recited at page 5 of the answer, is well taken. In light of the collective teachings and showings of both references, it would have been obvious to have modified Chandra's teachings in light of Marco's teachings such as to cause resiliency of the network when a router or link failure occurs and these teachings guarantee that the message is received by all subscribers without any loss of the message as specifically claimed. To the extent broadly recited in independent claim 1 on appeal, it is clear that the TCP protocol provides for this inherently anyway as well as the more specific basis of claims such as independent claim 48 requiring the logging of the message before it is delivered to the individual clients which is also clearly implicit and/or actually taught in Marco in a broad perspective view of the teaching value of this reference. In light of these additional considerations from those set forth by the examiner in the answer, we sustain the rejection as set forth by the examiner and embellished upon here.

We generally agree with the examiner's detailed responsive arguments beginning at page 9 of the answer to those set forth in

the brief. The focus of the arguments in the brief is upon the teaching value of Marco with very little discussion at all as to Chandra. However, as to appellants arguments here, the general teaching value of Marco we believe would not have been lost by the artisan in considering this reference in light of Chandra's teachings as explained earlier.

As for the remarks in the reply brief, again, from our perspective and we believe the artisan's perspective, the teaching value of Marco goes well beyond the more specific teachings of Marco such as limiting its teaching value to a point-to-point environment as explained earlier. It teaches the state of the art. We therefore do not agree with appellants' argument that Marco does not teach the resilient routing of messages to multiple clients of a network wherein the routing is based on the data content of the message irrespective of any destination information within the message. This has not been the position of the examiner in the statement of the rejection and the examiner has not set forth a rejection under 35 U.S.C. § 102 of the claims on appeal over Marco alone. The teaching value of Chandra as generally asserted by the examiner includes multicast protocols on a network in an environment of publish/subscribe systems comparable to that which is generally

disclosed and not set forth in the argued claims on appeal. To the extent the Marco does not teach the ability to route messages to multiple clients in a network, Chandra plainly does this.

As to the brief remarks at the bottom of page 13 of the principal brief on appeal relating to claims 51-54, the subject matter of dependent claims 51 and 53 appears to be redundant to that which has been set forth in their parent independent claims. Moreover, the recitations in claims 52 and 54 of the circumstance of being resilient to multiple concurrent router or link failures is in our view not beyond the reliability teachings of the TCP protocol as noted earlier with respect Marco anyway. The overall teaching value of Marco, as we have said earlier in this opinion, goes well beyond the point-to-point retransmission technique of a specific contribution Marco made to the art.

In view of the foregoing we have sustained the rejections of claims 1, 10, 14, 24, 25, 34, 38 and 47-54 under 35 U.S.C. § 103.

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REMAND TO EXAMINER

Because the features of dependent claim 2, such as the publish/subscribe system supporting a content-based subscription environment, as a representative claim of those claims objected to by the examiner, contain requirements that appear to be taught in Chandra because this reference teaches a publish/subscribe system, this application is remanded to the examiner for reconsideration of the rejection of the claims that the examiner has objected to in light of the teaching value of Chandra in view of Marco as expanded upon here. The examiner is also free to add any other new prior art in the reconsideration of the allowability of these claims.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

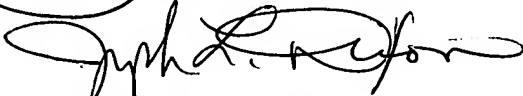
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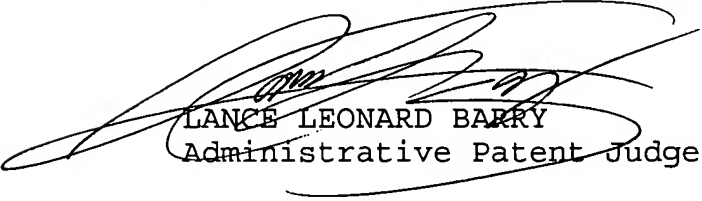
This application, by virtue of its "special" status, requires an immediate action. MPEP § 708.01(D) (8th Ed., Rev. 2, May 2004). It is important that the Board be informed promptly of any action affecting the appeal in this case.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a) (1) (iv).

AFFIRMED/REMANDED


JAMES D. THOMAS
Administrative Patent Judge)


JOSEPH L. DIXON
Administrative Patent Judge)


LANCE LEONARD BARRY
Administrative Patent Judge)

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